

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

RONALD W. AND KELLY J. JOHNSON,

Debtors

**Bankruptcy No. 04-32996
Chapter 7**

**NOTICE OF MOTION AND MOTION
OBJECTING TO CLAIMED
EXEMPTION**

TO: The Debtors and other entities specified in Local Rule 9013-3.

1. Michael S. Dietz, Trustee of the above bankruptcy estate moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion on September 7, 2004, at 1:30 p.m., in Courtroom 228B, United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this Motion must be filed and delivered not later than 1:30 p.m. on August 31, 2004, which is seven days before the hearing, or filed and served by mail not later than August 28, 2004, which is ten days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 7 case was filed on May 18, 2004. The case is now pending in this Court.

5. This Motion arises 1 U.S.C. §§ 522, Bankruptcy Rule 4003 and Local Rule 4003-1(a). This Motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, and 9013-5.

6. The Debtors have scheduled 401K Securian Fund. Attached as Exhibit "A" is a true and correct copy of Schedule C filed in this case.

7. Movant objects to the above noted exemption claimed in that schedule for the following reasons: The Trustee does not believe the Debtors retirement account is a 401K. Documentation provided by the Debtor indicates this is an employee savings plan. Moreover, the Trustee does not believe the funds are reasonably necessary for the support of the Debtors. Debtor, Ronald Johnson, has been employed in his trade for sixteen years, does not have any serious medical conditions and has sufficient resources to rebuild a retirement account.

WHEREFORE, the Trustee moves the Court for an Order denying the claimed exemption of the 401K Securian Fund.

Dated: August 5, 2004

/s/ Michael S. Dietz

Michael S. Dietz
Registration No. 188517
DUNLAP & SEEGER, P.A.
Attorneys for Trustee
206 S. Broadway, Suite 505
Post Office Box 549
Rochester, Minnesota 55903
Telephone: (507) 288-9111

VERIFICATION

I, Michael S. Dietz, Trustee, the moving party named in the foregoing Notice of Hearing and Motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: August 5, 2004

/e/ Michael S. Dietz

Michael S. Dietz, Trustee
206 S. Broadway, Suite 505
Post Office Box 549
Rochester, Minnesota 55903
Telephone: (507) 288-9111

IN RE Johnson, Ronald W. & Johnson, Kelly J.
Debtor(s)

Case No.

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

- ☒ 11 U.S.C. § 522(b)(1): Exemptions provided in 11 U.S.C. § 522(d). *NOTE: These exemptions are available only in certain states.*
- ☐ 11 U.S.C. § 522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for 60 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debt interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SECTION OF U.S.C. OR STATE/LOCAL LAW APPLICABLE	FAIR MARKET VALUE	EXEMPT VALUE
SCHEDULE A - REAL PROPERTY			
Homestead 512 Hudson Avenue, Marshall, Minnesota Lot Two (2), Northland Second Addition to the City of Marshall, County of Lyon, State of Minnesota.	11 USC § 522(d)(1)	7,003.46	90,000.00
SCHEDULE B - PERSONAL PROPERTY			
Household goods and furnishings	11 USC § 522(d)(3)	2,500.00	2,500.00
Books, pictures, etc.	11 USC § 522(d)(3)	200.00	200.00
Clothing	11 USC § 522(d)(3)	300.00	300.00
Jewelry	11 USC § 522(d)(4)	200.00	200.00
Hobby equipment	11 USC § 522(d)(3)	150.00	150.00
401K Securian Fund	11 USC § 522(d)(10)(E)	21,104.62	21,104.62
Wal-Mart stock interest	11 USC § 522(d)(5)	275.00	275.00
1973 Dodge Motorhome	11 USC § 522(d)(5)	1,200.00	1,200.00
1994 GMC Sonoma Pick Up 4WD	11 USC § 522(d)(2)	1,675.00	3,000.00
2000 Pontiac Montana van	11 USC § 522(d)(2)	1,000.00	11,000.00

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SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy Case No. 04-32996

RONALD W. AND KELLY J. JOHNSON,

Debtors.

UNSWORN CERTIFICATE OF SERVICE

I, Emily D. Stenhoff, declare under penalty of perjury that on August 5, 2004, I mailed copies of the following:

Trustee's Notice of Motion and Motion Objecting to Claimed Exemption

by US Mail, postage pre-paid, to each entity named below at the address stated below:

OFFICE OF THE US TRUSTEE
1015 UNITED STATES COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

JEFF BAGNIEFSKI
ATTORNEY AT LAW
PO BOX 6
ROCHESTER MN 55903

RONALD W. AND KELLY J. JOHNSON
512 HUDSON AVE
MARSHALL MN 56258

Executed on August 5, 2004

Signed:



Emily D. Stenhoff
DUNLAP & SEEGER, P.A.
P O BOX 549
ROCHESTER MN 55903 0549
(507) 288-9111

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

**RONALD W. AND KELLY J.
JOHNSON,**

Bky Case No. **04-32996**
Chapter 7

Debtors

**ORDER SUSTAINING TRUSTEE'S
OBJECTION TO DEBTORS' CLAIM
OF EXEMPTION**

AT ST. PAUL, MINNESOTA,

This Chapter 7 case came on before the Court on September 7, 2004, for a hearing on the Trustee's objection to the Debtor's claimed exemption of the following property:

401K Securian Fund.

Appearances, if any, were noted on the record. Upon the documents on file herein and the arguments of counsel:

IT IS HEREBY ORDERED AND DETERMINED:

1. The Trustee's objection is sustained.
2. The Debtor's interest in the 401K Securian Plan is not exempt and is property of the bankruptcy estate to be administered by the Trustee in due course.

Dated: September __, 2004

BY THE COURT:

Gregory F. Kishel
United States Bankruptcy Judge